

Exhibit D



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

August 2, 2022

Ms. Lorin L. Reisner
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Ave. of The Americas
New York, NY 10019-6064

RE: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **22-02323-FOIA**

Dear Ms. Reisner:

This letter is in response to your request, dated June 21, 2022 and received in this office on June 22, 2022, for access to 5 types of records as stated below from April 1, 2021 to present concerning potential National Securities Market Rulemaking.

- Records sufficient to show any persons or entities, including representatives of Exchanges, Market-Makers, Retail Broker-Dealers, Industry Organizations, or Other Market Participants, who had communications with the SEC regarding retail stock order handling and execution, the national best bid and offer (the "NBBO"), payment for order flow ("PFOF"), price improvement, the concept of order-by-order competition, or the routing of retail stock orders including to auctions.
- To the extent not already produced in response to the previous request, records sufficient to show the location and time of communications between any persons or entities, including representatives of Exchanges, Market-Makers, Retail Broker-Dealers, Industry Organizations, or Other Market Participants, and the SEC regarding retail stock order handling and execution, the NBBO, PFOF, price improvement, the concept of order-by-order competition, or the routing of retail stock orders including to auctions.
- To the extent not already produced in response to the previous requests, all records evidencing or concerning any communications between any persons or entities, including representatives of Exchanges, Market-Makers, Retail Broker-Dealers, Industry Organizations, or Other Market participants, on the one hand, and the SEC, on the other hand, regarding retail stock order handling and execution,

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the NBBO, PFOF, price improvement, the concept of order-by-order competition, or the routing of retail stock orders including to auctions.

- To the extent not already produced in response to the previous requests, all records evidencing or concerning the communications referenced in Chair Gary Gensler's public calendar set out in Appendix A.
- To the extent not already produced in response to the previously requests, all records relating to the remarks of Chair Gensler at the June 8, 2022 Piper Sandler Global Exchange Conference available at:
<https://www.sec.gov/news/speech/gensler-remarks-piper-sandler-global-exchange-conference-060822>.

After careful consideration of your request, we have determined that your request is improper because the scope of the requested records is too broad. The parameters of your request are so broad to the point that it would require SEC staff to conduct unduly burdensome searches to fulfill them. The FOIA does not require an agency to review every document or file in its possession to locate potentially responsive records. See, *Hudgins v. IRS*, 620 F. Supp. 19 at 21 (D.D.C. 1985). The courts have held that the FOIA does not require agencies to conduct "unreasonably burdensome" searches for records.¹

Please be advised, in order for us to respond to your request, we would need to consult with every SEC staff member and/or office to search for any potentially responsive records. This would be an extremely burdensome undertaking on Commission Resources.

So we may conduct an accurate and focused search for records that may be responsive, please provide a succinct description of records you seek (e.g., by specific staff member or office, topic/issue, etc.) Please respond by **August 15, 2022** to indicate as specifically as possible what types of records you are requesting. If we do not hear from you by then, we will

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¹ See, e.g., *Van Strum v. EPA*, Nos. 91-35404, 91-35577, 1992 WL 197660, at *1 (9th Cir. 1992) (accepting agency justification denying or seeking clarification of overly broad requests because agency not required to conduct search which would place inordinate burden on agency resources); *Dixon v. Dep't of Justice*, 279 F. Supp. 3d 1, 2 (D.D.C. 2017) ("Where . . . an agency's response to a FOIA request calls for 'an unreasonably burdensome search,' . . . the agency need not honor the request.") (*aff'd*, 2018 WL 4610736 (D.C. Cir. 2018)).

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assume you are no longer interested and administratively close this request.

If you consider this response to be a denial of your request or an adverse determination for any other reason, you have the right to submit an appeal to the SEC's General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(f)(1). The appeal must be received within ninety (90) calendar days of the date of this adverse decision. Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.

You may file your appeal by completing the online Appeal form located at https://www.sec.gov/forms/request_appeal, or mail your appeal to the Office of FOIA Services of the Securities and Exchange Commission located at Station Place, 100 F Street NE, Mail Stop 2465, Washington, D.C. 20549, or deliver it to Room 1120 at that address.

If you have any questions, please contact me at hansenjo@sec.gov or (202) 551-8377. You may also contact me at foiapa@sec.gov or (202) 551-7900. You may also contact the SEC's FOIA Public Service Center at foiapa@sec.gov or (202) 551-7900. For more information about the FOIA Public Service Center and other options available to you please see the attached addendum.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Hansen", with a stylized flourish extending from the end.

Joel Hansen
FOIA Research Specialist

Enclosures

ADDENDUM

For further assistance you can contact a SEC FOIA Public Liaison by calling (202) 551-7900 or visiting <https://www.sec.gov/oso/help/foia-contact.html>.

SEC FOIA Public Liaisons are supervisory staff within the Office of FOIA Services. They can assist FOIA requesters with general questions or concerns about the SEC's FOIA process or about the processing of their specific request.

In addition, you may also contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. OGIS can be reached at 1-877-684-6448 or via e-mail at ogis@nara.gov. Information concerning services offered by OGIS can be found at their website at [Archives.gov](https://www.archives.gov). Note that contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.